

IN THE HIGH COURT OF ORISSA AT CUTTACK

RVWPET NO.140 of 2022

(Application under Order-XLVII Rule 1 of C.P.C. for Review of the Judgment dated 05.05.2022 passed in W.P.(C) No.7322 of 2020).

Pravasini Mohanty ***Petitioner***

-versus-

State of Odisha and others ***Opposite Parties***

Advocates appeared in the case through Hybrid Mode:

For Petitioner : ***Mr. S.K. Pattanaik, Sr. Advocate***

-versus-

For Opposite Parties : ***Mr. S.S. Pradhan, AGA***

CORAM:

JUSTICE V. NARASINGH

DATE OF HEARING :23.06.2022

DATE OF JUDGMENT: 23.06.2022

V. Narasingh, J.

1. The Writ Petitioner had approached this Court by filing W.P.(C) No.7322 of 2020 assailing the order passed by the Collector-cum-District Magistrate, Puri-O.P. No.2 dated 20.01.2022 in A.W.W. Misc. Case No.110 of 2010

(Annexure-1) to the WP(C) thereby affirming the order dated 08.05.2015 by which the petitioner working as Anganwadi Helper in Bisimatri Anganwadi Centre was disengaged and Opposite Party No.5, (Pravasini Mohanty) was allowed to continue as such.

2. On consideration of materials on record this Court by Judgment dated 05.05.2022 at Annexure-9 allowed the Writ Petition. Paragraphs thereof relevant for just adjudication of the present RVWPET is extracted hereunder.

x x x x x *“17. It is clear from the impugned order that in objective assessment was made to test the qualification inter se between the petitioner and two others who participated in the selection procedure.*

18. On such objective assessment based on the guidelines in which all the members of the Selection Committee participated, admittedly the petitioner secured the highest mark. In the face of such selection it was not open to the Collector to come to a conclusion in a highly arbitrary manner without any rhyme and reason that the selection of opposite party No.5 is to take precedence over that of the petitioner.

19. Considering the submission of learned counsel and taking into account the recitals in the counter affidavit, this Court is of the considered opinion that the impugned order is outcome of arbitrary, exercise of power and is tainted with malafide due to non-application of mind and hence, the same is set aside.

20. In terms of the earlier direction of this Court in the writ petition at the instance of the petitioner quoted hereinabove (order dated 30.01.2018 in W.P.(C) No.23721 of 2015), opposite party no.4 is directed to issue appointment order to the petitioner as Anganwadi Helper of Bisimatri Anganwadi Centre within 60 (sixty) days from the date of receipt/production of certified copy of this order.” x x x x x

3. Review Petition has been filed at the instance of the said Opposite Party No.5 in the Writ Petition No.7322 of 2020 for review of the judgment dated 05.05.2022 at Annexure-9.
4. The ground(s) of review as urged by the learned Senior Counsel appearing for the Review Petitioner (Opposite Party No.5) is extracted hereunder;

- “ i). that the writ petitioner had suppressed the real background facts of the case and had made false and fraudulent averments before this Hon’ble Court and adopted sharp practice to obtain the order in her favour.*
- ii). that the Collector, Puri (O.P.No.2) had on two occasion held that action of C.D.P.O., Nimapara (O.P.No.4) in appointing the petitioner as Anganwadi Helper in Bisimatri Anganwadi Centre under I.C.D.S., Nimapara was illegal, improper, and based on manipulation and fraud, yet the O.P.No.4-C.D.P.O., Nimapara, while filing the counter in this case had deliberately supported her own action by filing the false and misleading counter contrary to the orders of the Collectors, Puri (O.P.No.2) to help the petitioner and support her illegal appointment.*
- iii). that the order passed in this writ application is based on error apparent in the face of the record and this is fit case for review of the Judgment passed on 05.05.2022.”*

5. It is submitted by the learned Senior Counsel for the petitioner with vehemence that since the tenor of the counter was contrary to the factual matrix of the case at

hand relating to selection of Anganwadi Helper and the same was taken into consideration by this Court while passing the judgment under review, in the interest of Justice in exercise of review jurisdiction, the said judgment ought to be reviewed and the Writ Petition is liable to be dismissed or in the alternative, recalling the judgment under review matter should be heard afresh.

6. Brief background shorn of unnecessary details is quoted hereunder for convenience of ready reference;

- i. The Writ Petitioner had approached this Court by filing W.P.(C) No.7322 of 2020 assailing the order passed by the Collector-cum-District Magistrate, Puri, Opposite Party No.2 therein dated 20.01.2022 at Annexure-1 in AWW Misc Case No.110 of 2020, affirming the earlier order dated 08.05.2015 passed by Collector-cum-District Magistrate, Puri by which the selection of the petitioner as Anganwadi Helper (AWH) was set aside and Opposite Party No.5 was allowed to continue as AWH.
- ii. In the said Writ Petition counter affidavit was filed on behalf of Opposite Party Nos.2,3 and 4 (Collector-cum-District Magistrate, Puri, District Social Welfare Officer and Child Development Project Officer respectively). Petitioner filed rejoinder reiterating her stand in this W.P.(C).

- iii. The present review petitioner whose appointment was under challenge in the said writ petition was cited as Opposite Party No.5.
- iv. Opposite Party No.5 did not choose to file any counter affidavit nor participated in the hearing.
- v. On consideration of materials on record this Court set aside the impugned order passed by the Collector directing the disengagement of the Writ Petitioner and taking note of the earlier direction of this Court dated 30.01.2018 and 08.05.2015 in W.P.(C) No.23721 of 2015, at the instance of the Writ Petitioner, directed for issuance of appointment order to the petitioner as AWH vice Opposite Party No.5..

7. As extracted herein above, learned senior counsel on behalf of Review Petitioner (Opposite Party No.5 in the Writ Petition) contends that the stand taken by the said Opposite Party Nos.1 to 4 is contrary to the record and therefore, such stand in the counter ought not to have weighed with this Court while passing the judgment at Annexure-9 against the interest of Opposite Party No.5. It is submitted relying on the following judgments;

- *AIR 1952 SC 16 - Commissioner of Poice, Bombay-v-Gordhandas Bhanji*
- *AIR 2008 1888 – Pancham Chand and others -v- State of Himachal Pradesh and others*

that it amounts to supplementation of the impugned order by reasons by way of affidavit and as such the same being contrary to the settled position of law that an order is to be judged on the basis of reasons mentioned therein, the review of the judgment merits consideration.

7(A). It is apposite to notice that Annexure-2 (RVWPET) the Grama Sabha Resolution dated 30.01.2010 on which the Review Petitioner rests her case was admittedly not part of the pleadings of the W.P.(C), the judgment of which is subject matter of this RVWPET.

8. On a bare perusal of the counter affidavit, it can be seen that the Opposite Party Nos.1 to 4 had supported the impugned order of cancellation of engagement of the Writ Petitioner as Anganwadi Helper.

9. Paragraph-9 of the counter affidavit is extracted hereunder for convenience of ready reference;

x x x x x “9. That since the Collector, Puri, has passed a speaking order detailing the entire aspects, no defect can be traced out in the impugned order and as such the prayer sought for in the writ petition being devoid of any merit is thus liable to be dismissed.” x x x x x

10. Even accepting the contention of the learned senior counsel at its face value that the contents of the impugned order

ought to be accepted as gospel truth even then in the factual matrix of the case at hand, the errors which according to the review petitioner weighed with this Court in passing the judgment under review can by no stretch of imagination be said to be error apparent on the face of the record.

11. It can at best be categorized as error of appreciation, in view of the recitals in the counter affidavit extracted herein above.

12. What Constitutes “an error apparent on the face of the record” has been clarified by the Apex Court in the case of *AIR 1980 SC 674 – M/s. Northern India Caterers v. Lt. Governor, Delhi ;*

“Para-9...

x x x x x “Such an error exists if of two or more views canvassed on the point it is possible to hold that only one of them. If the view adopted by the Court in the original judgment is a possible view having regard to what the record states, it is difficult to hold that there is an error apparent on the face of the record.” x x x x x

(emphasis supplied)

13. It cannot be said, as noted, that in the case at hand a different stand being taken in counter affidavit and as such the decision cited by the learned senior counsel have no application.

14. It is thus reiterated that there being no error apparent on the face of record which is the condition precedent as stated by the Apex Court in the Case of ***Rajendra Kumar V. Rambhai*** reported in ***AIR 2003 SC 2095*** for entertaining a Review application, the RVWPET does not merit consideration.
15. The relevant portion of the ***Rajendra Kumar (Supra)*** is extracted hereunder;

x x x x x “*The limitations on exercise of the power of review are well settled. The first and foremost requirement of entertaining a review petition is that the order, review of which is sought, suffers from any error apparent on the face of the order and permitting the order to stand will lead such error, finality attached to the judgement/order cannot be disturbed.*” x x x x x

(emphasis supplied)

16. It is apt to note that, the Apex Court has cautioned regarding exercise of review jurisdiction in a routine manner and observed thus:-

x x x x x “*for there is a distinction which is real, though it might not always be capable*

of exposition, between a mere erroneous decision and a decision which could be characterised as vitiated by “error apparent”. A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error.” x x x x x

(Ref: AIR 1964 SC 1372 – Thungabhadra Industries Ltd. v. Govt. of A.P.)

17. The factual errors if any as being canvassed assiduously by the learned senior counsel cannot be the basis for exercise of review jurisdiction. Reference in this regard can be made to the judgment of the Apex Court in the case of ***Asharfi Devi V. State of U.P.*** reported in **(2019) 5 SCC 86**.

x x x x x “18. It is settled law that every error whether factual or legal cannot be made subject-matter of review under Order 47 Rule 1 of the Code though it can be made subject-matter of appeal arising out of such order. In other words, in order to attract the provisions of Order 47 Rule 1 of the Code, the error/mistake must be apparent on the face of the record of the case.” x x x x x

(emphasis supplied)

18. On a conspectus of materials on record and examining the stand taken by the review petitioner, on the touchstone of law relating to exercise of review jurisdiction, this Court does not find any merit in the review application and the same accordingly stands rejected.
19. As prayed for it shall be open for the petitioner to seek return of the certified copy of the judgment under review at Annexure-9 by substituting the same by an authenticated photo stat copy.

(V.Narasingh)
Judge

Orissa High Court, Cuttack,
Dated the 23rd of June, 2022/Santoshi

